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REPLY TO THE ATTENTION OF

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Blue Tee Corporation  
c/o: Terri Faye, Esq.  
Babst, Calland, Clements and Zomnir  
1 North Maple Avenue  
Greensburg, PA 15601

C-14J

Re: Old American Zinc Superfund Site (IL) - Response to Blue Tee Comments  
on Modified Remedial Investigation and Feasibility Study (RI/FS) Statement of Work (SOW)

Dear Ms. Faye:

The United States Environmental Protection Agency (EPA) is in receipt of your letter of February 20, 2004. This EPA response letter and the attached February 23, 2004, revised AOC and modified SOW are the formal response of EPA. Because this concerns negotiations for a potential settlement, I am sending this to only the parties EPA contemplates will be signing the CERCLA Section 106 Administrative Order by Consent (AOC) for RI/FS at the above referenced Site: Blue Tee and the General Services Administration (GSA). Please inform me at once if this is not the case.

In response to the legal issue raised in your letter, as to whether your client would rather receive a CERCLA Section 106 Unilateral Administrative Order (UAO), or sign an AOC to the same effect, I would point out that in the present matter the ultimate legal requirements of either document are the same. Both compel RI/FS work activity, and while the UAO cannot compel the payment of past costs, the AOC obviously offers a covenant and contribution protection for all work performed as well as costs paid. EPA has been negotiating in good faith towards the resolution of this part of Site requirements through an AOC, and will continue to do so for the present.

In response to the technical comments raised in your letter, EPA has specifically addressed each separate issue. (Please note that EPA responses are designated as such and appear as shaded text). Please review the responses below and the attached SOW modification. EPA is willing to hold one (1) conference call or face-to-face negotiation session, if Blue Tee (or GSA) requests such a meeting. However, because of the need to move forward to completion of this matter, EPA requires that any such meeting be scheduled and held within ten (10) calendar days of your receipt of this letter. At the end of the 10-day period, if the parties have not resolved the AOC and SOW (with written commitments to execute said documents), then EPA is prepared to conclude negotiations and seek other enforcement options.

In reference to your specific technical comments on the SOW:

### **Schedule**

A threshold issue raised by the changes EPA made to the SOW relates to the schedule. As noted in your letter, you indicated that the due dates have been modified in accordance with the changes to the form of the documents, but that no requirements or obligations were altered. However, our review indicates that the revised due dates do have an impact on the substantive work and require further modification as discussed below.

First, as a general concept, Blue Tee believes that it is important and appropriate for submissions of final documents to be tied to the opportunity to discuss agency comments on the draft documents. Absent the opportunity to have such discussions, Blue Tee might have to proceed to make changes based upon comments that it does not fully understand. Therefore, the relevant portions of the text and Table with the Schedule for Major Deliverables should specify that deliverables are due a specified number of days from a meeting to discuss agency comments (as opposed to a number of days from receipt of the comments.)

#### **EPA Response:**

Meetings and discussions of comments on draft documents are a normal part of progressing toward the final document. Typically, EPA discusses such comments with Respondents, either by phone or in person. Since this activity is a normal part of the process to progress from a draft to a final document, and since EPA already considered this activity when estimating final deliverable due dates, there is no need to change the SOW for this purpose.

Page 9, of 27-Task 4. This section has been revised to provide that the draft RI Report must be submitted within 120 days of receipt of the last set of RI analytical data. Because the revised draft now separates the submission of the RI from the FS, more time will be required for submission of the draft RI Report. Blue Tee proposes that it be due 210 days after receipt of the RI data. In addition, the last version of the SOW provided that the final RI Report must be submitted within 60 days of meeting to discuss EPA's comments. The revised SOW requires the final RI Report to be submitted within 30 days of receipt of EPA's comments. Again, Blue Tee believes that it is important for the submittal date to be tied to an opportunity to discuss EPA's comments. In addition, Blue Tee requests a minimum of 45 days to revise the RI Report after receipt and discussion of EPA's comments.

#### **EPA Response:**

EPA will agree to extend the due date for submitting the draft RI Report to 150 days of receipt of the last set of RI analytical data.

See earlier response. EPA will not agree to adjusting the due date of the final RI Report based on

an EPA/Respondent meeting.

EPA will agree to extend the due date for submitting the final RI Report from 30 to 45 days of receipt of EPA comments.

Page 20 of 27, Paragraph 6. Comparative Analysis of Remedial Action Alternatives. This section provides that the final FS Report must be submitted within 30 days of the receipt of the comments on the draft FS Report. Again, Blue Tee believes that submissions should be tied to any discussions intended to clarify EPA comments. Also, 30 days may not be sufficient to revise a FS Report. For these reasons, Blue Tee requests that the final FS Report shall be submitted within 45 days of a meeting with EPA to discuss EPA comments on the draft FS Report.

EPA Response:

See earlier response. EPA will not agree to adjusting the due date of the final FS Report based on an EPA/Respondent meeting.

EPA will agree to extend the due date for submitting the final FS Report from 30 to 45 days of receipt of EPA comments.

### **Work Plan**

The current draft SOW does not provide for preparation of a Work Plan. Blue Tee believes that it is imperative that there be an agreed upon Work Plan. In fact, EPA Guidance contemplates that a Work Plan will be developed as part of the Scoping Phase of the work. Therefore, the first task that should be performed is the development of the Work Plan. Those tasks which currently are listed as elements of the RI/FS Support Sampling Plan, such as the Data Gap Description discussed on page 3 of 27, paragraph B, should be discussed under the new Task 1 - Work Plan.

EPA Response:

EPA believes that the Support Sampling Plan contains the major components of a work plan; therefore, EPA will not change the SOW to add a work plan. For clarity, EPA will revise the wording in Section E of Task 1 to indicate that the schedule required in the SSP applies to all RI/FS tasks, not just those of the SSP.

EPA does not believe any reorganization of tasks under the SOW is needed.

### **RI/FS Support Sampling Plan**

The RI/FS Support Sampling Plan ("SSP") does not address or resolve what sampling will be required. Blue Tee believes that this issue should be addressed in the Work Plan. If the issue of what sampling is required is not addressed, a very complicated SSP providing for phased or

iterative sampling will be required. This would be cumbersome and time consuming.

**EPA Response:**

Further specifics of sampling will be included in the Respondent's SSP. It is not appropriate for the SOW to be very specific for the sampling required among media.

Subparagraphs B. i. Waste Characterization through B. vii. Pilot Tests. Blue Tee is unclear as to why these tasks are included under the Data Gap Description section. While these tasks describe work to be done as part of a Support Sampling Plan, it does not seem that they should be discussed in the portion of the Support Sampling Plan that discusses the Data Gap Analysis. It seems that these are stand-alone sections of a Support Sampling Plan, or in the case of the Pilot Tests, a separate section altogether. Also, note that Gary Uphoff previously provided comments on the Waste Characterization section that have not been addressed.

**EPA Response:**

EPA does not believe that reorganization of SOW tasks as stated serves much of a purpose at this time.

EPA previously considered Mr. Uphoff's comments. Previous responses by EPA and modifications to the initial draft SOW reflect EPA's consideration of Mr. Uphoff's comments.

B. vi. Ecological Assessment. The Terrestrial Threatened and Endangered Species Assessment should be done prior to drafting the Ecological Assessment Plan. If a terrestrial threatened and endangered species is identified at the Site, only risk to that terrestrial species should be assessed. This section should reflect that concept.

**EPA Response:**

EPA already revised the current wording in this section based on earlier Respondent comments. This change allows for a less comprehensive ecological assessment than EPA initially described. EPA does not believe that this section needs to be further revised.

Section C. 6. Quality Assurance Project Plan ("QAPP"). The numbering for this section is somewhat confusing. The QAPP is a part of the SSP and should be discussed in that section of the SOW.

**EPA Response:**

The latest version of the SOW that EPA sent to the Respondent has the QAPP under the SSP as Task 1, Section C, Subsection i.

**Task 2: Community Involvement Support**

Blue Tee requests that EPA provide it with a sample Technical Assistance Plan ("TAP") so that it better understands this requirement. In addition, the timeline for this Task should be revised. Currently, this section provides that "no later than by the date that the draft SSP plan is due to U.S. EPA, Respondents will select the TAP recipient, release \$5,000 in start-up funds, confirm selection of the Technical Advisor and finalize an appropriate contract...." The current version of the SOW provides that the draft SSP is due to EPA 120 days after the effective date of the Order. Blue Tee does not believe that 120 days will be enough to write the TAP, address EPA comments, publicize the TAP, select the recipient, release funds, etc. Further, you requested that Blue Tee propose additional terms for the TAP. Blue Tee proposes that the TAP funds can be used to review reports and provide comments, but shall not be used for taking any samples.

**EPA Response:**

EPA will check to see if a final version of a TAP is available for the Respondent.

The Respondent is required to select the TAP recipient and release funds only if a qualified community group is in place. It is unlikely that such a group will be in place at this Site 120 days after the effective date of the Order. If a group is in place by that time, EPA believes that the time period allowed in the SOW is sufficient to accomplish the tasks described.

EPA will revise the SOW to indicate that TAP funds cannot be used for sampling.

**Task 4: RI Report**

Attached is a revised outline for the Site Description and Background which Blue Tee believes is more appropriate for this Site for which groundwater is not the predominant media of concern.

**EPA Response:**

EPA believes that the current organization of the SOW is acceptable. Furthermore, EPA will not consider such a major rewrite of the SOW at this stage of negotiations. EPA has stated to the Respondent in recent correspondence that it will not consider such major changes.

**New Task 5: Risk Assessment**

Blue Tee believes that Task 4, Section 2.8 should be retitled "Task 5: Risk Assessment," the discussion of the Human Health Risk Assessment should be Section 5.1, and old 2.9 Ecological Risk Assessment should be new 5.2.

**EPA Response:**

EPA will not consider such a significant reorganization of the SOW at this time.

Also, the discussion of the Ecological Risk Assessment should specify that it will be limited to aquatic species and any threatened and endangered terrestrial species that are identified as being located at the Site.

**EPA Response:**

EPA will make this clarification in the Ecological Risk Assessment section of the RI Report task, even though this is already stated in Task 1, Section B, Subsection vi.

**Old Task 5, New Task 6: Alternatives Array Document ("AAD")**

Page 17 of 27, last paragraph. The revised AAD, if necessary, would be submitted within 45 days after the meeting with EPA to discuss EPA comments.

**EPA Response:**

See earlier response. EPA will not change the due date of the revised AAD based on an EPA/Respondent meeting.

EPA will agree to extend the due date for submitting the revised AAD from 30 to 45 days of receipt of EPA comments.

**Old Task 6, New Task 7: FS Report**

Page 20 of 27, Section 6, Comparative Analysis of Remedial Action Alternatives, last paragraph. The final FS Report will be submitted within 45 days of the meeting with EPA to discuss EPA's comments.

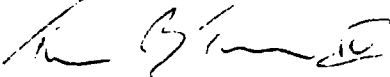
**EPA Response:**

See earlier response. EPA will not change the due date of the final FS Report based on an EPA/Respondent meeting.

EPA will agree to extend the due date for submitting the revised FS Report from 30 to 45 days of receipt of EPA comments.

Please consider these EPA comments, review the attached revised SOW and contact me with any comments or questions at 312/886-6613.

Sincerely yours,



Tom Turner  
Assoc. Regional Counsel

Attachments

cc: R. Murawski, RPM  
US EPA, Region 5 (SR-6J)

G. Watts, Enf. Spec.  
US EPA, Region 5 (SR-6J)


GSA, c/o: D. Pinkston, Esq.  
US DOJ/Def. - Denver, CO

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Terri Faye  
1 N. Maple Avenue  
Greensburg, PA 15601

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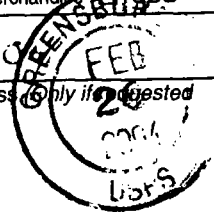
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